IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 498 OF 1995

The State of Maharashtra ...Appellant.

Versus

1. Shantaram Chango Dhangare,
Adult,

2. Bhagoji Chango Dhangare,
Adult,

Both R/o. Abitghar,
Tq. Wada, Dist. Thane ...Respondents.

.....

Shri. A.S. Shitole, A.P.P. for appellant.

Ms. Shraddha Mohite, Adv. for respondents.

.....

CORAM: SMT. V.K. TAHILRAMANI, J.

DATED: 29TH NOVEMBER, 2004

ORAL JUDGMENT:-

1. Through this appeal, the appellant i.e. State of Maharashtra has challenged the order dated 16.6.1995 passed by the learned J.M.F.C. Wada, District Thane in Regular criminal case No. 82/93. By the said judgment and order, the learned Magistrate acquitted the respondents i.e. original accused Nos. 1 and 2 of the offence under section 26(f), 41(2) (b) of Indian Forest Act and Section 31, 27 and 52 of the Wild Life Protection Act r.w. section 379 of I.P.C.

2. The prosecution case briefly stated is as

under:-

. That, both the respondents i.e. original accused Nos. 1 and 2 in furtherance of their common intention illegally cut down 43 Khair trees and two Teak trees totally worth Rs.71,760/- from the Reserve Forest compartment No.922 of Vaitarna Range. The complainant P.W.1 Range Forest Officer on information visited compartment No.922 alongwith panchas and staff and he found stumps without trees. He also found that the trees had been rolled down from the hill. Hence, he followed marks of the trees towards the bottom of the hill and found that the marks led to the land of the respondents where he found the heap of wooden logs. According to the complainant i.e. P.W.1, wooden logs were cut down from compartment No.922 hence, the same came to be seized under panchanama (Exh.21). Thereafter, complaint came to be filed against the respondents. The confessional statements of the accused also came to be recorded (Exh.22 and 23).

3. In due course the respondents were put up for trial in the court of J.M.F.C., Wada, District Thane. Charge came to be framed against both the respondents under Sections 26(f), 41(2) (b) r.w. section 42(1) of the Indian Forest Act and under

Section 27 r.w. 51, section 31 r.w. 51 and 52 of Wild Life Protection Act 1972 and under Section 379 r.w. 34 of I.P.C. Both the accused pleaded not guilty and claimed to be tried. The defence of the accused is that false case has been filed by the R.F.O. and they are the owners of the goods seized by R.F.O.

4. During the course of trial two witnesses were examined i.e. the complainant R.F.O. P.W.1 Shri. Khade and panch witness P.W.2 Shri Shinde. After considering the evidence on record, the learned Magistrate acquitted the respondents vide impugned judgment. Hence, this appeal.

5. I have heard Shri. Shitole, learned A.P.P. for the appellant-State and Ms. Shraddha Mohite, learned advocate, appointed for respondents. I have also perused the entire material on record. After carefully perusing the material on record, I am implicitly satisfied that the view of acquittal taken by the Magistrate was not only a possible view but also a plausible one.

6. In the present case, two witnesses have been examined i.e. the complainant P.W.1 Shri. Khade and panch witness P.W.2 Shri. Shinde. The complainant has stated that on information he

visited compartment No.922 and he found that 43 Khair trees and two Teak trees had been illegally felled. He found stumps on the top of the hill and thereafter, he has observed that the trees were rolled down the hill which caused marks. The marks led to the land of accused persons. In the land of the accused persons he found heap of wooden logs. He recognised wooden logs as those from compartment No.922, hence, he seized the same in the presence of panchas vide panchanama Exh.21. His evidence further shows that the market value of the said trees was Rs.71,760/-. This amount is reflected in the complaint as well as panchanama. The complainant has further deposed that both the accused have confessed their guilt in his presence. Confessional statements of both the accused were recorded at Exh.22 and 23. However, on perusal of the cross examination of this witness it is seen that both these accused persons cut down their Malki with the permission of the Government. His cross examination also shows that the accused persons obtained permission to cut down Khair and Teak trees. It is further revealed from his cross examination that he has perused the documents in respect of Malki of the accused. His cross examination also reveals that they had gone to the spot of the incident though the Malki of the accused.

. The learned Magistrate has observed that the complainant has admitted that the place of seizure does not fall within his jurisdiction but it falls within the jurisdiction of R.F.O. Western region, Wada. Nothing has been produced on record to show that on the date of the raid, P.W.1 was in charge of Western Zone i.e. Wada. The learned Magistrate has further observed that from the evidence on record it appears that R.F.O. has exceeded his jurisdiction and raided the area which does not fall within his jurisdiction. In this connection it would be pertinent to note that the trees were found cut within his jurisdiction, there is no dispute on this aspect. In such case if the Officer followed the tracks and found wooden logs which tallied with those cut from the forest land, he is entitled to seize the same, even if the wood is found outside his jurisdiction. Thus, I find it difficult to agree with the observation of the learned Magistrate on this aspect.

7. The Panchas in the present case are illiterate persons. One of the panch is P.W.2 Shri. Kishan Shinde. He is also illiterate. His cross examination shows that the complainant has obtained his thumb impression on panchanama Exh.21. Thus the evidence of the panchas is not of much use to

the prosecution.

8. It is further the case of the complainant P.W.1 Shri. Khade that both the accused persons admitted their guilt in his presence and hence, their confessional statements came to be recorded at Exh.22 and 23. The said confessional statements bear thumb impression, however, it is the case of the accused persons that accused No.1 used to sign and not put thumb impression. Various applications preferred by accused No.1 which are on record, show that he has signed on them and has not put his thumb impression. In such case, it is strange to note that Exh.22 which is alleged confession of accused No.1 shows his thumb impression. The confessional statements of the accused persons are merely showing their names near the thumb impressions. In such case some doubt arises in the mind as to whether the confessional statements can be relied upon.

9. It is the duty of the prosecution to prove that the seized property is cut down from compartment No.922 which come under the reserved forest. However, in the present case, it cannot be said that the complainant has proved beyond doubt that the properties seized is corresponding to the property removed from the forest. It is admitted

by the complainant that accused No.2 has cut down his Malki with the permission of the Govt. from S.No. 35/2, 36/1-B. It is also admitted by complainant that he has observed the documents of the Malki of accused No.2. It is also admitted by the complainant that accused obtained permission to cut down Khair and Teak wood trees. Thus, the view taken by the learned Magistrate that the prosecution has utterly failed to prove that the accused persons committed the offence as alleged is a possible and reasonable view.

10. In the present case it is the case of the accused persons that the wood belongs to them. The said wood came to be sold for Rs.18,500/-. The learned Magistrate has directed the complainant to pay an amount of Rs.1,28,000/- i.e. the value of the property seized by him to accused No.2 by way of compensation costs. However, it is seen that it is the case of the prosecution from the beginning that the cost of the seized property was Rs.71,760/-. This amount is mentioned in the panchanama Exh.21 and in the complaint. It is also admitted by the complainant in his cross examination. The accused persons have not disputed at any point of time that the value of wood seized was not Rs.71,760/-. The accused persons have not alleged any malafides against the complainant. In

such case in my view, an appropriate compensation which ought to be given to accused No.2 is Rs.71,760/-.

11. As far the acquittal is concerned one cannot loose sight of the fact that this is not an appeal against conviction but it is an order of acquittal which has been challenged. It is well settled that if the view of acquittal could have been reasonably arrived at then the mere circumstance that the appellate Court could have taken a different view would be no ground to interfere. In this connection, there is no dearth of authorities but to eschew prolixity, I am only referring to two of them. **AIR 1971 SC 66 in the case of Khedu Mohtan Vs. State of Bihar and (2003) 1 SCC 1 in the case of C. Anthony Vs. K.G. Raghavan Nair.** The said case was also one of appeal against acquittal and in respect of the acquittal the Supreme Court has observed that unless the finding of the trial court are perverse or contrary to the material on record, the High Court in appeal cannot substitute its finding merely because another contrary opinion was possible on the basis of material on record. In my view, the view of acquittal in the present case was a reasonable and possible view.

12. In the circumstance, Criminal appeal is partly

allowed. The order of acquittal of the respondent is confirmed. However, the compensation is fixed at Rs.71,760/-. The respondents are on bail, their bail bonds stand cancelled.